

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 15--Civ-22787**

DR. JAMES ERIC MCDONOUGH,
Plaintiff,

vs.

MIAMI-DADE COUNTY a political subdivision
J.D PATTERSON, Director of the Miami-Dade Police
Department, in his official capacity, UNKNOWN
MIAMI-DADE COUNTY POLICE
DEPARTMENT FACEBOOK PAGE ADMINISTRATOR
in his individual and official capacity and JOHN DOES
I THROUGH X, in their personal and official capacities,

Defendants.

COMPLAINT

INTRODUCTION

1. The Miami-Dade Police Department (“MDPD”) operates an official social media page on the website Facebook.com. The page clearly states: “Welcome to the Official MDPD Facebook Page.”

2. The Facebook page of the MDPD states that the page was “created to share information with the community.” The public is invited to make comments on various topics placed on the MDPD Facebook page wall.

3. Despite affirmatively opening this page for discourse and commentary, the Plaintiff has had his comments removed in violation of his First Amendment freedom of speech. Moreover, the Plaintiff has been banned from being able to make further comments on the Facebook page.

4. The Plaintiff has received no explanation for this ban and censorship of his comments. No notice or opportunity to be heard was ever provided to the Plaintiff.

JURISDICTION

5. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of his rights under the First, Fifth and Fourteenth Amendments to the United States Constitution.

6. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a) (3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Fed.R.Civ.P. 65,

7. Venue is proper under 28 U.S.C. § 1391

PARTIES

8. Plaintiff Dr. James Eric McDonough is a resident of Miami-Dade County, Florida.

9. Defendant Miami-Dade County is a political subdivision of the state of Florida and at all times relevant to the case authorized by law to control and maintain the Miami-Dade Police Department.

10. J.D. Patterson is the Director of the Miami-Dade Police Department and at all times relevant to the case was an agent of the Defendant Miami-Dade County acting under of color of state law.

11. The Unknown Miami-Dade County Police Department Facebook Page Administrator was at all times relevant to the case acting under color of state law and acting within the course of scope of his/her employment with the Defendant Miami-Dade County. The true name and capacity of the Unknown Miami-Dade County Police Department Facebook Page

Administrator is not currently known to the Plaintiff. The Plaintiff will amend this complaint to reflect the true name(s) of the aforementioned party as such time as they become known.

12. John Does I through X, inclusive, were at all times relevant to the case employees or agents of the Defendant Miami-Dade County, acting under color of state law and acting within the course of scope of their employment with the Defendant Miami-Dade County. The true names and capacities of John Does I through X are not currently known to the Plaintiff. The Plaintiff will amend this complaint to reflect the true name(s) of the aforementioned parties as such time as they become known.

FACTS

13. Defendants operate a Facebook page for the Miami-Dade County Police Department. The stated purpose of the page is to share information with the community. Visitors are permitted to express their opinions on the Facebook page, however MDPD reserves the right to remove comments deemed inappropriate or obscene. There are no definitions on the page as to what is to be deemed inappropriate or obscene.

14. MDPD posts on the wall of its Facebook page information relating to items of general interest as well as those things directly related to the police department and its employees. Visitors to the page, aside from reading the posts, can “like”, “comment”, or “share” the posts. Each of those have a button on the computer screen that the visitor can select depending on their opinion of the post.

15. To “like” just informs the person(s) putting up the information or opinion on the wall how the visitor felt about the information on the page.

16. The “comment” button allows the visitor to write in his or her own words a response to that particular post on the Facebook page. When a visitor comments, all of those viewing the page can see and read the comment.

17. The “share” button allows the visitor to send that posting to someone else on Facebook.

18. On or about February 16, 2015, the Miami-Dade Police Department placed a post advising the public that they had purchased a Lenco Bearcat armored vehicle for their SRT (Special Response Team).

19. The Plaintiff while visiting the page decided to post a comment, as all visitors are encouraged or permitted to do. His comment stated that “after the Redlands SRT massacre, what could possibly go wrong” or words to that effect.

20. Shortly thereafter, the Plaintiff discovered that his comment had been deleted and that his “like” and “comment” buttons have been deleted by the Miami-Dade Police Department. He has therefore been prohibited and banned from “liking” or commenting on any future posts on the Miami-Dade Police Department Facebook page.

21. The Plaintiff is unable, as a member of the public, to participate in any discussions that may appear on the Miami-Dade Police Department Facebook page. Other members of the public are invited to comment, however the Plaintiff’s past and future comments are censored for political or other reasons.

**Count I- Violation of the First and Fourteenth Amendments to the United States
Constitution and 42 U.S.C. §1983
(Against Miami-Dade County and all Defendants in their official capacities)**

22. Plaintiff re alleges and incorporates by reference paragraphs 1-21.

23. The Defendants have engaged in arbitrary censorship of commentary that is posted on the Facebook page of the Miami-Dade Police Department. They have done that by deleting the Plaintiff's comments for political or other unconstitutional reasons and prohibited and banned him from making any further comments on the Facebook page.

24. There are no stated policies on the MDPD Facebook wall that puts the Plaintiff, or any visitor, on notice as to what comments would be considered inappropriate or obscene.

25. The Plaintiff's comment that was deleted cannot be considered inappropriate or obscene.

26. This censorship has deprived the Plaintiff of his right to freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution.

27. This arbitrary actions of the Defendants have risen to the level of policy or custom through its policy makers, The Board of County Commissioners; and or Defendant Patterson; and or Defendant Unknown MDPD Facebook Administrator; and or John Does I through X; such that Miami-Dade County is responsible for the unconstitutional actions of their employees.

28. The custom and policy of Miami-Dade County, through its policy makers the Board of County Commissioners and/or the other listed Defendants, was the primary moving force behind the actions of the County's employees and those that deprived the Plaintiff of his rights under the First and Fourteenth Amendments..

29. As a direct and proximate result of the Defendants' actions, Dr. McDonough has suffered irritation and shame at being denied the same access to a public forum as any other citizen of the United States should enjoy. He has also been denied the right to exercise his freedom of speech to communicate on topics of importance to society.

WHEREFORE, Plaintiff respectfully request this Court:

- A. Award the Plaintiff compensatory and punitive damages.
- B. Issue a declaratory judgment that the Defendant's administration of the MDPD Facebook page violates the First and Fourteenth Amendments to the United States Constitution.
- C. Enter a temporary and/or permanent injunction directing the Defendant to restore the Plaintiff's posts and to permit the Plaintiff to make comments on the MDPD Facebook page
- D. Award reasonable expenses incurred in the litigation, including reasonable attorney and expert fees, pursuant to 42 U.S.C. §1988.
- E. Order other relief the Court deems just and equitable.

**Count II- Violation of the Fifth and Fourteenth Amendments to the United States
Constitution and 42 U.S.C. §1983
(Against Defendants Patterson, Unknown Facebook Administrator and John Does I
through X in their official capacity)**

- 30. Plaintiff re alleges and incorporates by reference paragraphs 1-21.
- 31. The Defendants have deleted the Plaintiff's comments and prohibited and banned him from any further participation of political or other discussion without any meaningful explanation.
- 32. The Plaintiff has no means to appeal the deletion and/or ban or to seek relief from a higher authority
- 33. There are no stated policies on the MDPD Facebook wall that puts the Plaintiff, or any visitor, on notice as to how to appeal or reverse the deletion of comments or banning from future comments.
- 34. The Plaintiff's comment that was deleted cannot be considered inappropriate or obscene as proscribed on the MDPD Facebook page.

35. The Defendants have deprived the Plaintiff of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

36. These actions of the Defendants have risen to the level of policy or custom through its policy makers, The Board of County Commissioners; and or Defendant Patterson; and or Defendant Unknown MDPD Facebook Administrator; and or John Does I through X; such that Miami-Dade County is responsible for the unconstitutional actions of their employees.

37. The custom and policy of Miami-Dade County, through its policy makers the Board of County Commissioners and/or the other listed Defendants, was the primary moving force behind the actions of the County's employees and those that deprived the Plaintiff of his rights under the Fifth and Fourteenth Amendments..

38. As a direct and proximate result of the Defendants' actions, Dr. McDonough has suffered irritation and shame at being denied the same access to a public forum as any other citizen of the United States should enjoy. He has also been denied the right to exercise his freedom of speech to communicate on topics of importance to society.

WHEREFORE, Plaintiff respectfully request this Court:

- A. Award the Plaintiff compensatory and punitive damages.
- B. Issue a declaratory judgment that the Defendant's administration of the MDPD Facebook page violates the Fifth and Fourteenth Amendments to the United States Constitution.
- C. Enter a temporary and/or permanent injunction directing the Defendant to restore the Plaintiff's posts and to permit the Plaintiff to make comments on the MDPD Facebook page
- D. Award reasonable expenses incurred in the litigation, including reasonable attorney and expert fees, pursuant to 42 U.S.C. §1988.
- E. Order other relief the Court deems just and equitable.

**Count III- Violation of the First and Fourteenth Amendments to the United States
Constitution and 42 U.S.C. §1983
(Against Unknown Facebook Administrator and John Does in their individual capacities)**

39. Plaintiff re alleges and incorporates by reference paragraphs 1-21.

40. The Defendants have engaged in arbitrary censorship of commentary that is posted on the Facebook page of the Miami-Dade Police Department. They have done that by deleting the Plaintiff's comments for political or other unconstitutional reasons and prohibited and banned him from making any further comments on the Facebook page.

41. There are no stated policies on the MDPD Facebook wall that puts the Plaintiff, or any visitor, on notice as to what comments would be considered inappropriate or obscene.

42. The Plaintiff's comment that was deleted cannot be considered inappropriate or obscene.

43. This censorship imposed by the Defendants has deprived the Plaintiff of his right to freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution.

44. As a direct and proximate result of the Defendants' actions, Dr. McDonough has suffered irritation and shame at being denied the same access to a public forum as any other citizen of the United States should enjoy. He has also been denied the right to exercise his freedom of speech to communicate on topics of importance to society.

WHEREFORE, Plaintiff respectfully request this Court:

A. Award the Plaintiff compensatory and punitive damages.

B. Issue a declaratory judgment that the Defendant's administration of the MDPD Facebook page violates the First and Fourteenth Amendments to the United States Constitution.

C. Enter a temporary and/or permanent injunction directing the Defendant to restore the Plaintiff's posts and to permit the Plaintiff to make comments on the MDPD Facebook page

D. Award reasonable expenses incurred in the litigation, including reasonable attorney and expert fees, pursuant to 42 U.S.C. §1988.

E. Order other relief the Court deems just and equitable.

**Count IV- Violation of the Fifth and Fourteenth Amendments to the United States
Constitution and 42 U.S.C. §1983
(Against Unknown Facebook Administrator and John Does in their individual capacities)**

45. Plaintiff re alleges and incorporates by reference paragraphs 1-21.

46. The Defendants have deleted the Plaintiff's comments and prohibited and banned him from any further participation of political or other discussion without any meaningful explanation.

47. The Plaintiff has no means to appeal the deletion and/or ban or to seek relief from a higher authority

48. There are no stated policies on the MDPD Facebook wall that puts the Plaintiff, or any visitor, on notice as to how to appeal or reverse the deletion of comments or banning from future comments.

49. The Plaintiff's comment that was deleted cannot be considered inappropriate or obscene as proscribed on the MDPD Facebook page.

50. The Defendants have deprived the Plaintiff of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

51. As a direct and proximate result of the Defendants' actions, Dr. McDonough has suffered irritation and shame at being denied the same access to a public forum as any other

citizen of the United States should enjoy. He has also been denied the right to exercise his freedom of speech to communicate on topics of importance to society.

WHEREFORE, Plaintiff respectfully request this Court:

- A. Award the Plaintiff compensatory and punitive damages.
- B. Issue a declaratory judgment that the Defendant's administration of the MDPD Facebook page violates the Fifth and Fourteenth Amendments to the United States Constitution.
- C. Enter a temporary and/or permanent injunction directing the Defendant to restore the Plaintiff's posts and to permit the Plaintiff to make comments on the MDPD Facebook page
- D. Award reasonable expenses incurred in the litigation, including reasonable attorney and expert fees, pursuant to 42 U.S.C. §1988.
- E. Order other relief the Court deems just and equitable.

Dated: July 27, 2015

Respectfully submitted,

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